

LUCAS COUNTY COMMON PLEAS COURT

CORNER ADAMS & ERIE STREETS
TOLEDO, OHIO 43604

**SUMMONS
CIVIL ACTION**

FILING TYPE:

OTHER TORT

CITY OF TOLEDO DEPT OF PUBLIC UTILITIES
CO LAW DEPT
ONE GOVERNMENT CENTER SUITE 2250
TOLEDO, OH 43604

G-4801-CI-0201204450-000
JUDGE: STACY L COOK

You have the right to seek legal counsel. If you cannot afford a lawyer, you may contact the Legal Services of Northwest Ohio. If you do not qualify for services by the Legal Services of Northwest Ohio and do not know an attorney you may contact the Toledo Bar Association's Lawyer Referral Service (419) 242-2000.

You have been named as a defendant in a Complaint filed in this Court by the plaintiff named below. A copy of the Complaint is attached to this Summons.

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, a copy of an answer to the complaint, within twenty-eight (28) days after you receive this Summons, exclusive of the day of service or to an amended complaint within the remaining response time to the complaint or 14 days, whichever period may be longer. Your answer must be filed with the Clerk of Court of Common Pleas within three (3) days after the service of a copy of the Answer on the plaintiff's attorney.

If you fail to serve and file your Answer, judgment by default will be rendered against you for the relief demanded in the Complaint.

PLAINTIFF (S)

JG WEING SEWER CONTRACTORS INC
4030 FITCH RD
TOLEDO, OH 43613

ATTORNEY FOR PLAINTIFF(S)

MARTIN J. MCMANUS
303 BELL BUILDING
709 MADISON AVENUE
TOLEDO, OH 43624-1624

BERNIE QUILTER
CLERK OF COURTS

Date: July 25, 2012

 , Clerk

FILED
LUCAS COUNTY

2012 JUL 24 P 3:21

COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

J.G. EWING SEWER CONTRACTORS,
INC.
d.b.a. E & K Sewer Contracting
4030 Fitch Road
Toledo, OH 43613
Plaintiff,

v.

CITY OF TOLEDO
c/o Law Department
One Government Center
Suite 2250
Toledo, OH 43604

&

CITY OF TOLEDO
Department of Public Utilities
c/o Law Department
One Government Center
Suite 2250
Toledo, OH 43604

&

CITY OF TOLEDO
Division of Purchasing & Supplies
c/o Law Department
One Government Center
Suite 2250
Toledo, OH 43604

Defendant(s).

CASE NO:

010201204450

Judge

Assigned to Judge Stacy L. Cook
COMPLAINT WITH JURY DEMAND

Martin J. McManus (0039251)
303 Bell Building
709 Madison Ave.
Toledo, OH 43604
(419) 242-1255
Fax: (419) 242-1705

Corey L. Tomlinson (#0081894)
Gressley, Kaplin & Parker, LLP
One SeaGate
Suite 1645
Toledo, OH 43604
(419) 244-8336
Fax (419) 720-8504

Now comes Plaintiff, by and through undersigned counsel, and for his Complaint, states and avers as follows:

I. Parties

1. Plaintiff, J.G. Ewing Sewer Contractors, Inc., is an Ohio corporation with its principal place of business at 4030 Fitch Rd., Toledo, Lucas County, Ohio; Plaintiff is a licensed sewer contractor doing business as E & K Sewer Contracting.

2. Defendant, City of Toledo, is a political subdivision of the State of Ohio organized and existing under the laws of the State of Ohio and is within the territorial jurisdiction of this Court.

3. Defendant, City of Toledo, Department of Public Utilities, is a municipal department of the City of Toledo and is within the territorial jurisdiction of this Court.

4. Defendant, City of Toledo, Division of Purchasing and Supplies, is a municipal division of the City of Toledo and is within the territorial jurisdiction of this Court.

II. Facts

5. Plaintiff adopts, as if fully rewritten herein, all of the allegations contained in paragraphs 1 through 4 above.

6. On or about April 23, 2011, Plaintiff submitted a Proposal Unit Price Contract and accompanying Application and Affidavits for the 2011 Sewer and Water Service Kill Contract, City Wide, pursuant to an Advertisement for Bids. Plaintiff's bid complied with all requirements of Chapter 187 of the Toledo Municipal Code, with a grand total amount equaling \$469,400.00.

7. On or about April 26, 2011, Defendants awarded the 2011 Sewer and Water Service Kill Contract, City Wide to a competing bidder, who amended its bid to reflect a grand total amount equaling \$469,400.00, a bid identical to Plaintiff's bid.

8. Plaintiff was the lowest and best bidder under Chapter 187 of the Toledo Municipal Code.

III. Count I – Antitrust

9. Plaintiff adopts, as if fully rewritten herein, all of the allegations contained in paragraphs 1 through 8 above.

10. Defendants, through their agents and employees, communicated Plaintiff's bid amount to the winning bidder, causing said bidder to amend its bid prior to the close of bidding.

11. Defendant's communication of a sealed bid to a competing bidder constitutes an agreement which unreasonably restrains competition and which affect interstate commerce, a per se violation of 15 U.S.C § 1, et seq.

12. Plaintiff suffered damages as a direct and proximate result of Defendants actions.

13. Defendant is entitled to damages, including treble damages and attorneys' fees.

IV. Count II – Corrupt Practices

14. Plaintiff adopts, as if fully rewritten herein, all of the allegations contained in paragraphs 1 through 13 above.

15. The conduct of defendants involves commission of two or more specifically prohibited state or federal criminal offenses, including, but not limited to unlawful use of a telecommunications device in violation of R.C. § 2913.06, bribery in violation of R.C. § 2921.02, and solicitation or accepting unlawful compensation in violation of R.C. § 2921.43.

16. The prohibited criminal conduct of defendants constitutes pattern of corrupt activity.

17. Defendants have participated in affairs of enterprise or have acquired and maintained interest in or control said enterprise. R.C. § 2923.32.

18. Plaintiff suffered damages as a direct and proximate result of Defendants' corrupt practices.

V. Count III – Municipal Code Non-Compliance

19. Plaintiff adopts, as if fully rewritten herein, all of the allegations contained in paragraphs 1 through 18 above.

20. Toledo Municipal Code § 187.12 articulates fourteen (14) factors which should be used to determine the "lowest and best" bidder. Under the factors proscribed by the Toledo Municipal Code, Plaintiff was the "lowest and best" bidder and was entitled to the contract award.

21. Defendants, City of Toledo Department of Public Utilities and Division of Purchasing and Supplies deviated from the proscribed bid selection procedure and awarded the contract to a competing bidder although the competing bidder's bid was not the lowest and best bid.

22. Plaintiff suffered damages as a direct and proximate result of Defendants' illegal deviation from the bid certification and selection procedure articulated in the Toledo Municipal Code.

VI. Count IV – Civil Conspiracy

23. Plaintiff adopts, as if fully rewritten herein, all of the allegations contained in paragraphs 1 through 22 above.

24. Defendants participated in a malicious combination.

25. Defendants' malicious combination resulted in a wrongful and unlawful act.

26. Plaintiff suffered damages as a direct and proximate result of Defendants' wrongful and unlawful act.

VII. County V – Tortious Interference with Business Relations

27. Plaintiff adopts, as if fully rewritten herein, all of the allegations contained in paragraphs

1 through 26 above.

28. There was a prospective business relationship between the Plaintiff and Defendant, City of Toledo.

29. Defendants, City of Toledo Department of Public Utilities and Division of Purchasing and Supplies knew of the prospective business relationship.

30. Defendants acted with the purpose and intent to interfere with Plaintiff's business relationship.

31. Defendants lacked a justification or privilege.

32. Plaintiff suffered damages as a direct and proximate result of the acts of Defendants.

WHEREFORE, Plaintiff hereby requests and prays for relief as follows:

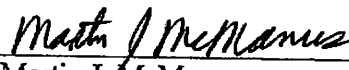
a. That Defendant City of Toledo's 2011 Sewer and Water Service Kill Contract, City Wide be adjudged a violation of the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. and declared null and void.

b. That Defendant City of Toledo be required to re-commence the 2011/2012 Sewer and Water Service Kill Contract, City Wide bidding process, in accordance with the Toledo Municipal Code.

c. That Plaintiff be awarded treble damages exceeding \$25,000.00, plus attorneys' fees, costs and interest accrued herein.

d. For such other relief as may be just and equitable.

Respectfully submitted,


Martin J. McManus
Counsel for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial of all jury-triable issues by the maximum number of jurors permitted by law.



Martin J. McManus
Counsel for Plaintiff

PRAECIPE

To the Clerk:

Please issue service of process on the Defendant identified in the caption of this case at the address set forth above pursuant to Ohio Civil Rule 4.



Martin J. McManus
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

J.G. Ewing Sewer Contractors,

Plaintiff.

vs.

City of Toledo,

Defendant.

) Case No. CI 12-4450

) Judge Stacy Cook

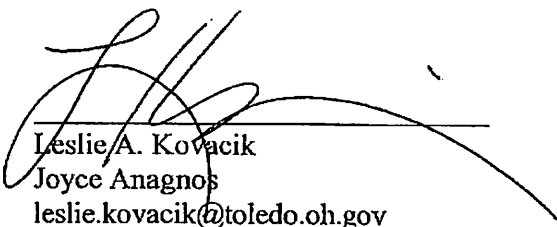
) REQUEST FOR EXTENSION
) AND JOURNAL ENTRY

RECEIVED
AUG 20 2012
LUCAS COUNTY CLERK

Defendant, City of Toledo, requests a FIRST EXTENSION, not exceeding 28 days, to MOVE or PLEAD on or before the 17th of September, 2012.

Opposing counsel has been properly notified of this request by mailing a copy of same to: Martin J. McManus, 709 Madison Ave., Toledo, Ohio 43604 and Corey L. Tomlinson, One SeaGate, Suite 1645, Toledo, Ohio 43604.

Representing City of Toledo


Leslie A. Kovacik

Joyce Anagnos

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joyce.anagnos@toledo.oh.gov

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The foregoing request is APPROVED/DENIED, and it is so ORDERED.

JUDGE

NOTE: This is to be used only for a FIRST extension of time for a Responsive Pleading to the Complaint, Counter-Claim, or Third Party Complaint (Gen.R. 5.04)